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A Comparison of Sentencing Outcomes for Defendants with Public Defenders Versus Retained Counsel in a Florida Circuit Court

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The Sixth Amendment to the U.S. Constitution states that a criminal defendant has the right to counsel for his defense, and the Fourteenth Amendment states that defendants must be provided due process and equal protection under law. Despite this, it is unclear whether indigent defendants in the United States—who are disproportionately ethnic minorities—are receiving such protections when it comes to the defense of their criminal cases. Approximately 80 percent of criminal defendants require court-appointed counsel because they are indigent. Many have questioned whether the case outcomes of defendants with court-appointed counsel are equivalent to those of defendants with retained counsel (Marcus, 1994).

The focus of this note is a public defender system. Public defender systems have been subject to much criticism because of the problems that some jurisdictions face. Many systems are underfunded, resulting in low salaries for attorneys and insufficient legal and support staff. The lack of funds and staff can result in overwhelming caseloads (Calogero, 1995; Drecksell, 1991; Marcus, 1994; Ogletree, 1995). It appears that one of the biggest problems facing all indigent defense systems is funding. Funding can affect the quality of services provided if there are not enough resources to do the job adequately. The current study addressed this issue by examining the public defender system in a northern Florida county. Effectiveness can be measured in a number of ways, including client satisfaction, number of dismissals, and favorable outcomes. This study focused simply on whether public defenders are able to obtain similar sentences for their clients when compared with private attorneys, controlling for relevant case characteristics such as charge seriousness and prior record. The state of Florida is considered to have an above-average public defender system (Spangenberg Group, 1996); therefore, negative results attributed to a good public defender system could have strong policy implications.

Previous Literature

According to Dixon (1995), there are essentially three theoretical frameworks for understanding sentencing decisions. The first framework, political theory, suggests that socioeconomic variables (e.g., race, income) play a role in sentencing outcomes. This is supported in research by Spohn, Gruhl, and Welch (1982) and Petersilia (1983), who state that minorities receive harsher sentences than whites for comparable offenses.

Stolzenberg and D' Alessio (1994) found that there was a negative correlation between socioeconomic status and sentence length.

A second framework encompasses legal theory, which posits that legal variables, such as charge seriousness and prior record, are the primary determinants of sentencing outcomes. This, too, is supported in research by Chiricos and Waldo (1975) and Dixon (1995), who claim that once legal variables are introduced into the analysis, socioeconomic variables become insignificant and are supplanted by significant legal variables. In an analysis of public defenders (a socioeconomic variable), Taylor et al. (1973) reported case outcomes for defendants with retained counsel and public defenders did not differ significantly when legal variables were controlled.

A third framework, organizational theory, suggests that court processes and organization, such as the courtroom work group, are responsible for sentencing outcomes. Walker, Spohn, and Delone (1996) argue that, as part of a courtroom work group, public defenders are more successful than private attorneys in negotiating favorable outcomes for their clients. Barak (1975), however, argues that the high caseload and poor organization of public defender offices place indigent defendants at a disadvantage with regard to case outcomes. Research by Silverstein (1965), Stover and Eckhart (1975), and Hanson et al. (1992) concluded that defendants with public defenders were at a disadvantage in that they were more likely to be incarcerated or to receive longer sentences. Included in this third framework are contextual factors that appear to play a role in sentencing outcomes. Research by Nardulli, Flemming, and Eisenstein (1984) reports that the interaction between "contextual" factors, such as individual and courtroom politics and attitudes, case/offense characteristics, and role expectations, plays a role in determining sentence outcomes and that one factor alone cannot account for a particular sentence.

The current study takes in aspects of all of these theories, including socioeconomic factors (race, attorney type), legal factors (charge seriousness, prior record), and organizational factors (attorney type). While it is quite possible that attorney type may have more of an impact at the early stages of a criminal case (getting charges dropped or achieving a favorable plea bargain), it is necessary to assess the performance of attorneys at the sentencing stage as well to ascertain whether attorneys play a role in the disparate treatment of offenders in the system. Research has well documented the disparity that exists when it comes to sentencing, even in the presence of sentence guidelines (e.g., Petersilia, 1983; Miethe and Moore, 1985), but the effect of attorney types on case outcomes has not received much consideration. Therefore, by extracting attorney type from the more general "socioeconomic variables" and "organizational variables," this study attempts to determine if attorney type stands alone in its effect on sentencing. Sentence guidelines have attempted to control discretion, in that there should be, at least theoretically, little to no disparity in cases that have similar case characteristics. Thus, any unjustified disparity would be problematic.

Methodology

Florida has a statewide public defender system, and the location of the study was a medium-sized northern Florida county with a population of 233,000. Public defenders are elected at the district level, and all offices are organized according to statewide administration. Thus, the organization of the public defender office in this county is comparable to most offices throughout the state. Data were gathered on adult felony cases in this county that closed during the period January 1, 1994, to December 31, 1996. Only cases in which formal charges had been filed were used in this study. This was done to examine decisions in the formal processing of defendants, and not in the initial stages of processing in which many cases are dropped or not referred for formal processing. This could have been problematic for the current study, since in the early stages of a case, the type of attorney a defendant has could have an effect on case processing. However, since case disposal at the early stage of a proceeding is ultimately the result of prosecutorial action, any "type-of-attorney" effect could be clouded by the actions of the prosecutor (little or no evidence, wrong suspect, etc.). This study also examined sentencing outcomes, not case outcomes in general, and at this stage of processing (after formal charges have been filed), convictions were more likely to result, thus enabling a good assessment of sentencing decisions.

In this county, as well as in the state of Florida as a whole, public defenders handled approximately 80 percent of all criminal cases brought before the court. Because of this, it was necessary to oversample retained counsel cases to ensure adequate representation in the sample. A three-year time period was chosen to provide a large-enough sampling frame to ensure a representative sample. Information on the cases was provided from files contained in the Office of the Clerk of Court, Felony Division.

Approximately 10,000 felony cases were closed during the study time period. This includes cases that were closed in previous years, but were reopened and subsequently closed again during this time period because of some activity on the part of the defendant or the court. Those released from prison or those whose probation was terminated were not included in the sample.

Information consisted of case numbers and dates of disposition for all felonies closed during the reference period. This information was subsequently divided into "retained" cases and "appointed" cases. Any appointed cases that involved private counsel assigned for conflict purposes were not included in the sample; thus, only those cases represented by retained counsel or public defenders were used the sample. The cases in each attorney group were organized chronologically by case number, and a systematic random sample was employed for each group. The total number of cases selected was 420-180 retained, 240 appointed.

Dependent Variables

Three sentence variables were analyzed. This study assessed the effect of attorney type on sentence type and length of incarceration. At the time of this study, the state of Florida had a split-sentencing scheme in place, but it was used at the discretion of the trial court. In this study, none of the cases sampled consisted of split sentences.

As a result, analyses were conducted using cases that received either probation or incarceration, and the length of sentence if given an incarcerative term.

Probation. This variable assessed whether convicted defendants were sentenced to probation (O=no, I=yes).

Incarceration. This variable assessed whether convicted defendants were sentenced to an incarcerative sentence (O=no, I=yes).

Length of Sentence. For those convicted defendants who were sentenced to a term in jail or prison, this variable assessed the length of that sentence in days.

Independent Variables

The primary variable of interest in this study was type of attorney. This variable distinguishes between those defendants with appointed attorneys (coded 0) and those defendants with retained attorneys (coded 1). This variable is also a measure of the socioeconomic status of the defendant, in that appointed attorneys are used by defendants who cannot afford to hire a private attorney.

Control Variables

Seriousness of the Charge. The seriousness of the charges against defendants could have a significant impact on sentencing decisions, considering it is one of the four legally relevant variables used to calculate a sentence in Florida (along with prior record, victim injury, and legal status of the defendant at time of arrest). Two measures were used to assess the seriousness of the charges against a defendant. The first measure, Felony Charges, assessed the number of felonies with which a defendant was charged. To assess the degree of the charge, another measure, Type of Charge, assessed whether the defendant was charged with a major felony (first degree or second degree) versus other felonies. Under Florida law, the number of felonies charged and the degree of felony combine to determine the seriousness of the charge. It was hypothesized that being charged with numerous felonies, a major felony, or both would carry more weight when determining a sentence than single or minor felonies.

Prior Record. Prior record could have a significant impact on decisions in that it is one of the four legally relevant factors used in sentence calculation in Florida. The number of prior felony convictions was coded to assess prior record.

Bail Status. Pretrial detention can have a significant impact on case outcome, in that defendants who are denied bail may be seen as serious offenders, or those unable to make bail cannot effectively assist in their defense. Cases in this study were coded to indicate whether the defendant was jailed (0) or released (1) pending proceedings.

Race. Race may influence case outcome because of bias and discrimination. This variable was coded to indicate whether a defendant was nonwhite (0) or white (1).

Age. This variable was used because of its potential effect on case outcome; that is, there might be a reluctance to send very young or very old defendants to prison. For this variable, the actual age of the defendant, not a range of ages, was coded.

Gender. This variable was used because of a possible reluctance to send females to prison, especially if children are involved. This variable was coded as female (0) and male (1).

It should be noted that only eight of the cases analyzed did not result in a conviction, either through dismissal of the charges or because the defendant was found not guilty at trial. The remaining cases resulted in convictions, all of which were obtained through plea agreements. Therefore, it was not possible to provide a useful analysis of attorney impact on pleas versus trials because there was almost no variation. All but eight of the cases in the analyses that made it to this point in processing resulted in plea agreements.

Another point that should be noted is that there could possibly be concerns about intercorrelation between the above variables. Bivariate correlations revealed the highest correlation between race of defendant and attorney type (Pearson's $r = -.33$) and between bail status and number of prior felony convictions (Pearson's $r = -.30$). Because of this, interaction terms for these variables were included in each analysis to account for correlation effects. In each analysis, the interaction terms were not significant.

Analysis and Results

One of the case outcome variables was continuous (Sentence Length); the remainder were dichotomous. OLS regression was used for analyzing the independent effects of type of attorney on the continuous variable. Logistic regression was used for the dichotomous dependent variables.

Table 1 indicates the logistic regression results for the dependent variable *Probation*. As indicated, the primary variable of interest, *Attorney Type*, was not significant at the given levels. Other variables were significant, however. For *Prior Felony Convictions*, those defendants with more prior felony convictions were less likely to receive probation than those defendants with fewer prior felony convictions (.6941 odds ratio). For *Bail Status*, defendants who were out of jail were more likely to receive probation than defendants who were in jail (3.8865 odds ratio).

Table 2 provides the logistic regression results for the dependent variable *Incarceration*. Results indicated that the primary variable of interest, *Attorney Type*, was not significant at the given levels. However, *Prior Felony Convictions*, *Bail Status*, *Gender*, and *Offense* were significant. Defendants with more prior felony convictions were more likely to receive incarceration than defendants with fewer prior felony convictions (1.3242 odds ratio). Defendants who were out of jail were significantly less likely to receive incarceration than defendants who were in jail (.1920 odds ratio). Male defendants were also more likely to receive incarceration than female defendants (2.3907 odds ratio). Finally, defendants convicted of minor felonies were less likely to receive incarceration than defendants charged with major felonies (.3748 odds ratio).

Table 3 illustrates the OLS regression results for the dependent variable *Sentence Length*. As noted, the primary variable of interest, *Attorney Type*, was not significant at the given alpha levels. For those defendants sentenced to incarceration, *Bail Status*, *Number of Felony Charges*, and *Offense* were significant predictors of *Sentence Length*.

Table 1
Logistic Regression Results for Probation

Variable	B	Standard Error	Odds Ratio
Attorney type	-.2945	1.0693	.7449
Bail status	1.3575	.3353	3.8865*
Age of defendant	-.0133	.0177	.9868
Gender of defendant	-.2895	.4708	.7486
Race of defendant	1.2454	1.2169	3.4742
No. of felony charges	.0676	.1147	1.0699
Offense	.6205	.3342	1.8599
No. of prior felony convictions	-.3652	.0741	.6941*
Constant	-.3398	2.2466	

* p<.01
-2 Log Likelihood Ratio = 266.259

Table 2
Logistic Regression Results for Incarceration

Variable	B	Standard Error	Odds Ratio
Attorney type	.3554	.7701	1.4267
Bail status	-1.6503	.2892	.1920*
Age of defendant	-.0020	.0117	.9980
Gender of defendant	.8716	.3026	2.3907*
Race of defendant	-.3488	.7808	.7055
No. of felony charges	-.1138	.0793	.8924
Offense	-.9815	.2796	.3748*
No. of prior felony convictions	.2808	.0815	1.3242*
Constant	2.7120	1.6334	

* p<.01
-2 Log Likelihood Ratio = 451.316

Defendants who were out of jail were given shorter sentences (B=-277.922) than those who were in jail. Defendants convicted of multiple felonies were given longer sentences than defendants convicted of only one felony (B=207.016). Finally, defendants charged

with minor felonies were given shorter sentences than defendants charged with major felonies (-315.201).

Discussion

Previous research indicated mixed results with regard to the effect of type of attorney on case outcome. This study attempted to clarify some of the previous research and found

Table 3
OLS Regression Results for Sentence Length

Variable	B	Standard Error	T-value
Attorney type	74.689	333.476	.224
Bail status	-277.922	103.598	-2.683*
Age of defendant	-9.011	5.772	-1.561
Gender of defendant	152.671	153.180	.997
Race of defendant	-243.941	343.187	-.711
No. of felony charges	207.016	46.881	4.416*
Offense	-315.201	104.016	-3.030*
No. of prior felony convictions	30.016	25.003	1.201
Constant	1080.041	701.394	1.540

* $p < .01$
 $R^2 = .23$

some interesting results. Type of attorney had no effect on the sentence variables when controlling for the remaining variables, in that it was not significant in any of the analyses. Overall, legal variables (seriousness of charges, prior record) had the most impact on sentencing.

One reason for these outcomes could be that type of attorney simply did not have an impact on case outcomes; that is, appointed attorneys and retained attorneys provided equivalent representation, especially in the above-average public defender system of Florida. Public defenders may also enjoy a positive working relationship with other court actors (the courtroom work group); therefore, they are able to present favorable deals for their clients. Another reason could be that attorneys, appointed or retained, now have very little power to improve the status of defendants in the criminal justice system. Sentencing guidelines and mandatory minimum sentences require judges to impose certain sanctions, and the defense attorney has little power to present favorable deals for his or her client (except for perhaps charge reduction). This does not

mean that attorneys were not instrumental in the initial stages of criminal proceedings (before formal charges are filed), which was not addressed in this study.

Future research should address the impact of attorney type on the initial stages of proceedings to determine if attorneys have an effect on whether a defendant pleads guilty, a case is dropped, or a defendant is convicted. The initial stages of a proceeding are where many cases are dropped or dismissed, and a study analyzing patterns of dismissal would be beneficial. Although the current study indicated that there was little difference between attorney types when it comes to sentencing defendants, the limited sentencing options given to judges could well explain this lack of discrepancy.

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